TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1924

No. 40

HUBERT WORK, SECRETARY OF THE INTERIOR, APPELLANT,

vs.

THE UNITED STATES EX REL. CHEMICAL FIXATION & CHEMICAL CORPORATION

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

FILED MAY 26, 1924

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 401

HUBERT WORK, SECRETARY OF THE INTERIOR, APPELLANT,

VS.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

INDEX

a Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, relator,
vs. At Law, No. 67884.
HUBERT WORK, SECRETARY OF THE INTERIOR, respondent.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition for mandamus.*

Filed July 27, 1923.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA, EX REL. Chestatee Pyrites & Chemical Corporation, et al.,
vs.
HUBERT WORK, SECRETARY OF THE INTERIOR. } At Law. No. 67884.

The petition of the United States on the relation of Chestatee Pyrites & Chemical Corporation respectfully represents:

I.

The relator, Chestatee Pyrites and Chemical Corporation, is a corporation duly and legally organized and existing under the laws of the State of Georgia, a citizen of the State of Georgia residing in the county of Fulton in said State and this petition is brought for a writ of mandamus against the respondent, Hubert Work, a citizen of the State of Iowa, residing in the District of Columbia.

II.

That the said Hubert Work, respondent, was and now is Secretary of the Interior of the United States, and as such charged with the administration of the laws of the United States relative to the war minerals relief claims, and especially section 5 of the act of March
2, 1919 (40 Stat., 1272) as amended by the act of November 23,
2 1921 (Public 99), and is sued in his official capacity as Secretary of the Interior, as aforesaid.

III.

The said respondent as Secretary of the Interior under said section 5 of said act as amended by the act of November 23, 1921, chapter 137, 42 Stat., 322, which act and amendment are here referred to was and is:

"Authorized to adjust, liquidate and pay such net losses as have been suffered by any person, firm or corporation, by reason of

producing or preparing to produce * * * pyrites * * * in compliance with the request or demand of the Department of the Interior * * * to supply the urgent needs of the nation in the prosecution of the war * * *

"The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final; * * *

"And provided further, that said Secretary shall consider, approve and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this act; * * *

"And provided further, that no claim shall be allowed or paid by the said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made, or obligations so incurred by the claimant, were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance."

IV.

The Chestatee Pyrites & Chemical Corporation, between the sixth day of April, 1917, and the twelfth day of November, 1918, in preparing to produce and in producing pyrites in compliance with the request of the Department of the Interior to supply the urgent needs of the nation in the prosecution of the war, made expenditures and incurred obligations in good faith upon property containing pyrites in sufficient quantities to be of commercial importance.

3 V.

As authorized by said act, approved March 2, 1919, section 5 thereof, said Chestatee Pyrites & Chemical Corporation did, on the 5th day of March, 1919, file its claim with the Secretary of the Interior, seeking and praying that an award be made to it of $914,172.73, the net losses incurred by it by reason by producing and preparing to produce pyrites in compliance with the request and demand of agents of the Department of Interior, which sum so claimed represented the net losses from expenditures made and obligations incurred as described in said section 5 of said act.

VI.

In the said petition or claim of Chestatee Pyrites & Chemical Corporation filed on the 5th day of March, 1919, this relator as part of said expenditures made set out and claimed interest paid prior to the 12th day of November, 1918, and set out specifically and by exhibits written contracts made by it wherein it had incurred obligations to pay interest on $695,000.00 borrowed by said relator and expended by it, in a legitimate attempt to produce pyrites for the needs of the nation for the prosecution of the war, in compliance with the request and demand hereinbefore alleged. Thereafter, on October 18, 1919, the Honorable Franklin K. Lane, then Secretary of the Interior, made Chestatee Pyrites & Chemical Corporation an award under said act of March 2, 1919, in the sum of $223,529.17, which award recognized in part the interest paid prior to November

12, 1918, on moneys borrowed by said Chestatee Pyrites &
4 Chemical Corporation, but which award was wholly inadequate and failed to comply with the obligations of said act of March 2, 1919.

VII.

Thereafter, by act approved November 23, 1921, chapter 137, 42 Stat., 322, it was provided:

"That all claimants * * * shall be reimbursed such net losses as they may have incurred, and are in justice and equity entitled to from the appropriation in said act,"

and the Secretary of the Interior was authorized:

"If in claims passed upon under said act (of March 2nd, 1919) awards have been denied or made on rulings contrary to the provisions of this amendment (the amendment of November 23, 1921,) or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts,"

and the then Secretary of the Interior, Honorable Albert B. Fall, did review the claim of Chestatee Pyrites & Chemical Corporation, relator herein, and did require a complete study of the facts of said relator's claim, and among other things required an investigation thereof by W. H. Dunn, chief accountant in the War Minerals Relief Division of the Department of the Interior.

VIII.

Said W. H. Dunn, by report filed September 21, 1922, found and reported that there had been included in the original claim of the Chestatee Pyrites & Chemical Corporation interest paid, and that said Honorable Franklin K. Lane had in his award included fifty-six and six-tenths per cent of interest paid, to the extent of $31,276.78, and said Dunn further reported that after deducting credits, interest paid and accrued during the stimulation period totaled
5 $40,795.13. (See pages 5, 49, and 120 of the report of said W. H. Dunn.) Chestatee Pyrites & Chemical Corporation showed without dispute that in compliance with the demands and requests of the Government and in a legitimate effort to produce pyrites, it had been compelled to borrow and expend the sum of $695,000, and to agree to pay thereon six per cent interest per annum; that prior to November 12, 1918, it had actually paid interest in a large amount, and there had accrued on said loan further interest that was then unpaid; that since November 12, 1918, to October 18, 1919, the date on which the award of Mr. Secretary Lane was made, further interest had accrued, and since said time on the obligation made prior to November 12, 1918, other interest has accrued.

IX.

The Department of the Interior found, and there is no dispute about the fact, that Chestatee Pyrites & Chemical Corporation, by reason of producing and preparing to produce pyrites, in compliance with the request or demand of the Department of the Interior, to supply the urgent needs of the nation in the prosecution of the war, in good faith expended money and incurred obligations in response

to such request and demand, and that such expenditures so made and obligations thus incurred by the Chestatee Pyrites & Chemical Corporation were made in good faith upon property which contained pyrites in sufficient quantities to be of commercial importance; and there is no dispute between the Department of the Interior and said Chestatee Pyrites & Chemical Corporation as to the right
6 of said Chestatee Pyrites & Chemical Corporation to receive an allowance and award for its net losses suffered as a consequence of its compliance with said request and demand.

X.

After the report of said W. H. Dunn, argument was had before the Honorable Albert B. Fall, then Secretary of the Interior, and on the 28th day of September, 1922, as authorized by the law, said Secretary of the Interior made an award of $469,784.62 in addition to the award theretofore made by the Honorable Franklin K. Lane, said award being based upon the finding of John Bryar, Assistant Commissioner of the Department of the Interior.

XI.

Said John Bryar, on whose report the said award was made, at page 21 thereof found that there should be deductions from the expenditures made of interest in the amount of $40,795.13, and that amount of expenditures made was disregarded in said report and subsequently disregarded in the award of the Secretary of the Interior. Neither in the report of said Assistant Commissioner nor in the award of the Secretary of the Interior was there any allowance made for obligations incurred to pay interest, and the Chestatee Pyrites & Chemical Corporation, relator herein, was denied a recovery for its expenditures made prior to the armistice, and for its obligations incurred thereafter to the extent that such expenditures represented payments of interest on said loan of $695,000.00, and to the extent that said obligations incurred represented interest on the remainder of said sum. The finding of the Honorable
7 Albert B. Fall, then Secretary of the Interior, is as follows:

"The Chestatee Pyrites and Chemical Corporation, Sept. 28, 1922. Atlanta, Georgia.

Claim No. 1.

"Additional memoranda by the Secretary, to be attached to the records of the Assistant Commissioner as part of the record herein.

"I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim; additional allowance for services, and an allowance of an increased amount for compensation for prestimulation plant.

"After full consideration, I am confident that the conclusions reached by the commission are as nearly correct as it is humanly possible to arrive at a just and equitable sum to be rewarded in relief. I, therefore, find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousand seven hundred eighty-four dollars and sixty-two cents ($469,784.62).

"If the Congress contemplated the payment of interest upon this claim, as has been suggested in argument, then this award, of course, does not preclude remedial action by the Congress of the United States acting directly.

(Signed) ALBERT B. FALL,
"*Secretary of the Interior.*"

XIII.

Your relator further shows that it again brought its claim that a proper construction of said act provided for losses caused by the payment of interest to the attention of the Department of the Interior before the retirement of Secretary Fall, with the request that one of three courses be pursued:

"First, that the question might be again considered by the department; second, that the question of interest might be referred to the Department of Justice; or, third, that the question of interest might be submitted to the Court of Claims."

8 Secretary Fall did not pass upon this application, but left the matter for the consideration of his successor, the Hon. Hubert Work.

XIIIa.

After the appointment of Hon. Hubert Work to the position of the Secretary of the Interior your relator, Chestatee Pyrites & Chemical Corporation, brought to the attention of the present Secretary its right to recover for the expenditures made and obligations incurred to pay interest, but the said Honorable Hubert Work refused to make any allowance for such interest expenditures or obligations, as had his predecessors, and, as had his predecessor, Albert B. Fall, held as a matter of law and as a construction of the law, that said expenditures and obligations for interest are not within the provisions of said act of March 2, 1919, as amended by the act of November 23, 1921, and refused to refer the question to the Department of Justice or the Court of Claims.

XVI.

Your relator, hereinbefore named, shows that the respondent's refusal to adjudicate its expenditures and obligations for interest incurred in good faith, as hereinbefore set out, and respondent's denial of his power and authority to award and pay net losses caused thereby is a clear mistake and plain misunderstanding of the unambiguous terms of said section 5 of the act of March 2, 1919, as amended by the act of November 23, 1921. Your relator shows that the right of the courts to pass upon a question of

9 law involving construction of an act of Congress can not, under the Federal Constitution, be taken from the courts, and respondent's nonaction can be reviewed and his disregard of the law corrected only by mandamus.

XVII.

Wherefore petitioner, on behalf of the relator aforesaid, prays:

1. That a writ of mandamus may be issued directing respondent, Hubert Work, Secretary of the Interior, to take jurisdiction of the claim of the relator for expenditures made and obligations for

interest incurred in good faith, as hereinbefore set forth, and to allow such sum as may be just and equitable, and to adjust and pay relator's net losses, consisting of interest, thus arising in preparing to produce said ores at the requests and demand of the Department of the Interior, and to ascertain the amount thereof and make award therefor.

2. That a rule may issue requiring respondent Hubert Work, Secretary of the Interior, to show cause, if any he can, why the writ of mandamus should not issue herein as prayed.

CHESTATEE PYRITES AND CHEMICAL CORPORATION,
By GEO. L. PRATT,
Vice Prest., Treas.

STATE OF GEORGIA, *County of Fulton, ss.:*

George L. Pratt, being duly sworn, deposes and says that
10 he is vice president and treasurer of Chestatee Pyrites & Chemical Corporation, and as such is authorized to file this petition and make this affidavit: that he has read and knows the allegations in said petition, and that the same are true, except where stated on information and belief, and when so stated he believes them to be true.

GEO. L. PRATT.

Subscribed and sworn to before me this 19 day of July, 1923.
[SEAL.] A. R. DYER,
Notary Public, Georgia, State at Large.
My commission expires February 24, 1926.
HOKE SMITH, Washington, D. C.,
EDGAR WATKINS, Atlanta, Ga.,
Attorneys.

Upon consideration of the petition filed in the above entitled cause it is by the court this 27 day of July, 1923, ordered that the respondent Hubert Work, Secretary of the Interior, be, and he is hereby required, to show cause, if any he can, on or before the 15 day of August, 1923, at ten o'clock a. m., why this writ of mandamus should not issue, as in the petition prayed, provided that a copy of said petition and of this order be served upon him on or before the 1st day of August, 1923.

JENNINGS BAILEY.

Service accepted 31 July, 1923.

C. EDW. WRIGHT,
Atty. for the Secy. of the Interior.

11 *Respondent's answer.*

Filed September 15, 1923.

* * * * * * *

Comes now the respondent and in answer to relator's petition herein filed, as well as by way of return to the rule to show cause herein issued, says:

1. He admits the allegations of paragraph 1 except that respondent is a citizen of the State of Colorado and not of Iowa as alleged.

2–4. He admits the averments of paragraphs 2 to 4, inclusive.

5. He admits the averments of paragraph 5 except that the correct amount of the award prayed by the relator was $914,172.73, instead of $919,172.73, the amount alleged in said paragraph.

6. Answering the averments of paragraph 6, he states the facts to be as follows: That the sum of relator's claim as filed with the Secretary of the Interior, as alleged, was $914,172.73 recapitulated in the said claim as follows:

"United States to claimants, debtor.

To improvements, machinery, etc., paragraph 10 above		$909,925.69
To cost of financing, paragraph 12		230,000.00
		1,139,925.69
CREDITS.		
By apparent profits, paragraph 13	$25,752.96	
By salvage, paragraph 14	200,000.00	
		225,752.96
Net loss due		914,172.73"

That the items comprising the sum of $909,925.69 aforesaid
12 were displayed in a balance sheet attached to relator's said claim as Exhibit "B," referred to in paragraph 10 of said claim; that none of said items set out or displayed any claim for interest whatever; that the item "Cost of financing, paragraph 12," as exhibited in said claim, made no mention of interest; that the said "paragraph 12" was as follows:

The payments thus made, as shown in paragraph 11, and the obligations thus incurred in order to comply with the request and demand of the Department of the Interior exceed by $230,000 the amount which claimants would have paid and incurred in financing the completion of their original plan to invest only $250,000 for the whole enterprise. A copy of claimants' original financing contract, dated March 14, 1917, is attached hereto, marked Exhibit "D."

That the paragraph 11 therein mentioned was in words and figures as follows:

In order to obtain the money necessary to make said improvements claimants by a contract of date May 6, 1918, have paid and contracted to pay as follows: The sum of one dollar and twenty-five cents ($1.25) per long ton on the first one hundred twenty thousand (120,000) long tons of ore sold by Ashcraft-Wilkinson Company, or sold or used by Chestatee Pyrites and Chemical Corporation since March 14, 1917, and the sum of one dollar ($1) per long ton for the next ninety thousand (90,000) tons, and the sum of seventy-five cents ($0.75) per long ton on the next one hundred twenty-five thousand (125,000) tons. A copy of said contract is attached hereto marked Exhibit "C."

That while the contracts referred to in said paragraphs mention interest on moneys advanced by the Ashcraft-Wilkinson Company, the import of said contracts was the constitution of the said Ashcraft-Wilkinson Company as the exclusive selling agent of the relator, and the obligations specifically mentioned in the "paragraph 11" aforesaid were stated in said contract to be "as compensation for its services." Further answering he says that upon consideration
13 of said claim so filed, it was ascertained and determined, by the then Secretary of the Interior, Franklin K. Lane, that the

sum of $223,529.17 was justly and equitably due the relators; that in reaching this result the cost of a railroad ($258,756.83), one of the items making up the sum total of said claim, was excluded on the ground that its construction was not induced by Government stimulation so as to make the loss incident thereto repayable under the war minerals relief act; that the item of $230,000, "cost of financing" aforesaid was likewise ruled against on the ground that while only a part of the specified tonnage had been sold, the claim was for commission upon the entire amount; that a further item of $29,000 for salaries of the executives was also disallowed on the ground that the same would constitute a profit excluded by the terms of the war minerals relief act; and that, in fine, Secretary Lane made said award of $223,529.17 based upon a certain percentage (56.6%) which percentage in his estimation represented the proportion of the total loss sustained by the relator accruing during the period from which the claimants were stimulated or asked by the Government to produce, to the armistice; that the said percentage was applied to the sum of $382,626.58 which on audit was ascertained to be the amount lost on power plant, mill, development, buildings, etc., and also upon a 10% commission for financing; that in no part of the award made by Secretary Lane was the item of interest mentioned or passed upon. He denies the allegation in paragraph 6 of the petition that said award of $223,529.17, or any award, recognized in part the interest paid prior to November 12, 1918, and he avers that said interest
14 was not included in said claim save as it was prorated as an overhead charge among the several items composing the relator's claim and in such disguise inadvertently and unwittingly allowed by Secretary Lane.

7. He admits the averments of paragraph 7.

8. Answering the averments of paragraph 8 he admits that the said Dunn in his report stated that Secretary Lane had included 56.6% of $31,276.78, interest on loans, in his award; but the said Dunn further reported, in this connection, that the same was "unwittingly included," due to an error in the details of the grouping of items "labor, materials, overhead, freight, etc." on the auditor's master sheets adopted by the chief accountant of the War Minerals Relief Commission; which said grouping likewise erroneously included the item of 56.6% of $29,000 for executive salaries, distributed as overhead, although Secretary Lane understood, and expressly so stated in his award, that he was allowing nothing on account of said salaries. He admits the other allegations of paragraph 8.

9–10. He admits the allegations of paragraphs 9 to 10, inclusive.

11. Answering the averments of paragraph 11, he states that when the relator's claim was before Secretary Fall on review as alleged in paragraph 7 of the petition herein, the contention of the relator was that the percentage theretofore fixed in ascertaining the net loss of the relator was too low and that the percentage should apply to all and not to a part only of the expenditures claimed to have been made by it. Thereupon the entire claim was considered de novo.
15 In lieu of a percentage of the whole expenditure, taken to cover the period of stimulation, the auditor for the Government and the auditor for the relator examined all items and agreed that the total amount of expenditure during the stimulation period, i. e., from June 18, 1917, to November 11, 1918, date of the armistice,

was $784,791.14; said amount included amount of ore sales, executive salaries, interest, taxes, a small real estate purchase, and legal services, amounting to $151,010.18. That with these figures as the basis, the assistant war minerals commissioner, John Briar, made the findings averred in paragraph 10 of the petition, and reported the same to the Secretary of the Interior, Albert B. Fall, who, after hearing duly accorded the relator, found and concluded that the additional sum of $469,784.62 was the just and equitable sum to be awarded in relief for the net losses sustained by the relator. He further avers that in making said award, it was concluded that the cost of construction of relator's railroad, theretofore disallowed, was properly chargeable to stimulation, and hence was allowed. But the cost of executive salaries, certain real estate, and the amount paid for interest, taxes, and legal services, together with the amount of ore sales and the salvage value of the property to the time of the armistice, were considered and determined not to be a part of the net losses justly and equitably due and payable to the relator under the relief acts of Congress, and were deducted from the total expenditures, together with the amount of award theretofore made by Secretary Lane as aforesaid, in ascertaining and determining the amount of the additional award, to-wit, the sum of $469,784.62 aforesaid. Subject to this explanation, he admits the averments of paragraph 12.

13. He admits the allegations of paragraph 13.

14. Answering the averments of paragraph 14, he admits that relator brought to his attention the matter of reimbursement of interest on borrowed capital, and that, on March 23, 1923, he refused to make allowance for interest as a sum justly and equitably due the relator, in a communication addressed to the attorney for relator in words and figures as follows:

DEAR MR. SMITH: Acknowledgment is made of your communication of the 28th ult., in relation to reimbursement of interest on borrowed capital to claimants under the war minerals relief act. You ask that the question of such reimbursement be reopened by the Secretary of the Interior, and by him again considered; and as alternatives you suggest that the question be referred either to the Department of Justice or the Court of Claims.

In reply I beg to state that the question of repayment of interest charges in war minerals relief claims has had full consideration by the department. In the case of the Chestatee Pyrites claim, to which you refer particularly, the question of interest was covered by briefs and by oral argument both before the commissioner and the Secretary of the Interior. The Secretary, on September 29, 1922, held that allowance of interest was not warranted, under the act, and suggested that if Congress intended to include expenditures for interest on borrowed capital, as suggested by counsel, claimant was not precluded from relief by Congress direct.

All war mineral relief claims have been and are being adjusted as to interest in accordance with the policy outlined by the Secretary in his final decision in the Chestatee claim. Under the circumstances, I feel that my predecessors have, so far as the department is concerned, settled the question finally.

15. Answering the averments of paragraph 16, he denies that he and his predecessors in office have refused to adjudicate the relator's

claim in so far as it involves expenditure and obligation for
17 interest incurred, and, on the contrary, avers the fact to be that he has considered and adjudicated said claim and has found and determined that the said items of interest, the amount of which has been computed and determined, and is known to him, are no part of the amount of losses which he can regard or does regard as justly and equitably due from the United States to the relator under the provisions of the acts of March 2, 1919, and November 23, 1921. He avers that he and his predecessors in the office of Secretary of the Interior have considered each and every element or item of alleged loss exhibited in relator's claim and have found, adjusted, and ordered payment to be made of the amount of relator's net loss determined by the Secretary to be just and equitable and therefore due and payable under the provisions of said acts, to wit, the total sum of $693,313.79, for which warrants have issued to the relator and the said amount has been duly paid to and accepted by the relator

Wherefore, having made complete answer to the petition and to return to the rule to show cause he prays that said rule may be discharged, that the said petition may be dismissed, that he may have judgment for his reasonable costs and be permitted to go hence without day.

HUBERT WORK,
Secretary of the Interior.

C. EDWARD WRIGHT, *Attorney.*

DISTRICT OF COLUMBIA, *ss.:*

Hubert Work, Secretary of the Interior, being first duly
18 sworn says that he has read over the foregoing answer by him subscribed and knows the contents thereof; that he is informed that the matters of fact therein set forth are true and he believes them to be true.

HUBERT WORK,
Secretary of the Interior.

Subscribed and sworn to this 14th day of September, 1923, before me.

[SEAL.] W. BERTRAND ACKER,
Notary Public in and for the District of Columbia.

Demurrer.

Filed October 10, 1923.

* * * * * * *

Comes now the relator, by his attorney, and says that the answer of the defendant to the rule to show cause issued in the above cause is bad in substance.

NOTE.—Points to be argued:

1. Interest paid and contracted to be paid in a legitimate attempt to produce pyrites at the request of the Department of the Interior is a proper item to be considered in determining the net losses of the relator.

2. The rulings of Secretary Fall and the respondent that the items of interest are no part of the amount of the losses which are justly and equitably due from the United States to the relator under the provisions of the acts of Congress of March 2, 1919, and November 23, 1921, are plainly erroneous, and amount to a refusal to take

19 jurisdiction of petitioner's claim for interest or to exercise relative thereto any discretion under the statute, and are a nullification of the plain intention of Congress.

3. The court has authority to construe the acts of Congress of March 2, 1919, and November 23, 1921, and to compel the respondent to take jurisdiction of relator's claim for interest, to hear proof, to ascertain relator's loss, if any, and to pay the amount thereof.

HOKE SMITH,
Attorney for Relator.

To C. EDWARD WRIGHT, Esq.,
Attorney for Respondent.

Take notice that the foregoing demurrer will be for hearing on the 19th day of October, 1923, at ten o'clock a. m., or as soon thereafter as same may be heard.

HOKE SMITH,
Attorney for Relator.

Motion for leave to amend petition.

Filed October 15, 1923.

* * * * * * *

Comes now the relator, by his attorney, and moves the court for leave to amend his petition heretofore filed, as follows:

By adding to said petition the following:

PARAGRAPH 18. That the financing contracts made between relator and Ashcraft-Wilkinson Company were for both the services
20 of Ashcraft-Wilkinson Company in selling the ore at a fixed price, and for interest at the rate of six per cent per annum upon money loaned; and the obligation incurred to pay interest was in no sense payment for services, but was payment for the use of the money advanced by Ashcraft-Wilkinson Company and procured by them by their endorsement for the use of relator, said financing contract having provided specifically that the money advanced "shall be evidenced by promissory notes of said corporation, endorsed by N. P. Pratt and George L. Pratt, and said notes shall bear interest from date until paid at the rate of six per cent per annum." A copy of the financing contract which contained the foregoing provision was made an exhibit to the original claim of the relator, which was filed with the Secretary of the Interior on the 5th day of March, 1919.

PARAGRAPH 19. Your relator, in its original claim, filed March 5, 1919, presented a claim in which the items were not definitely named, and in which total expenditures shown on a balance statement were relied upon. In these total expenditures all interest that had been paid up to and including the date of the balance statement was included. Subsequently, in the argument before the commissioner appointed by Mr. Secretary Lane, the right to include interest as a part of net losses was claimed, the law with reference thereto discussed, and authorities cited in support of the claim for interest. After the commissioner appointed by Mr. Secretary Lane had made an allowance exceptions were taken in the nature of an appeal to the Secretary, and in these exceptions interest was specifically claimed as a part of the net losses.

21 PARAGRAPH 20. Subsequent to the filing of the original claim, the amounts of interest which relator was compelled

to pay and for which relator became obligated increased, and the amount of the claim for interest was enlarged, due to the fact that the original award did not cover the losses of claimant or enable claimant to pay for the sums which it had borrowed, as set forth in its petition.

HOKE SMITH,
Attorney for Relator.

Memorandum of court.

Filed January 9, 1924.

* * * * * * *

Hearing on demurrer to respondent's answer to petition for mandamus.

The petition prays:

"That a writ of mandamus may be issued directing respondent, Hubert Work, Secretary of the Interior, to take jurisdiction of the claim of the relator for expenditures made and obligations for interest incurred in good faith, as hereinbefore set forth, and to allow such sum as may be just and equitable, and to adjust and pay relator's net losses, consisting of interest, thus arising in preparing to produce said ores at the requests and demand of the Department of the Interior, and to ascertain the amount thereof and to make award therefor."

The answer of the respondent avers that the Secretary of the Interior:

"On September 29, 1922, held that allowance of interest was not warranted, under the act, and suggested that if Congress intended to include expenditures for interest on borrowed capital, as suggested by counsel, claimant was not precluded from relief by Congress direct."

The demurrer to this answer raises practically a single ques-
22 tion of law, which is stated in point two of the demurrer as follows:

"The rulings of Secretary Fall and the respondent that the items of interest are no part of the amount of the losses which are justly and equitably due from the United States to the relator under the provisions of the Acts of Congress of March 2, 1919, and November 23, 1921, are plainly erroneous, and amount to a refusal to take jurisdiction of petitioner's claim for interest or to exercise relative thereto any discretion under the statute, and are a nullification of the plain intention of Congress."

In the court's opinion the question, in principle, has been settled by rulings of the appellate tribunals, controlling upon this court, and which require that the demurrer be sustained:

Secretary of the Interior vs. U. S. ex rel. Logan Rives, #4020, ——, App. D. C. ——, decided January 7, 1924.

Seaboard Air Line Railway Co., et al. vs. U. S., #407, Oct. Term, 1922, U. S. Supreme Court; decided March 5, 1923.

U. S. vs. State of N. Y., 160 U. S. 598.

Demurrer sustained.

F. L. SIDDONS, *Justice.*

January 9, 1924.

23 Supreme Court of the District of Columbia.

WEDNESDAY, JANUARY 9TH, 1924.

Session resumed pursuant to adjournment, Mr. Justice Siddons presiding.

* * * * * * *

Upon consideration of the demurrer of relator filed herein, to answer of defendant to rule to show cause issued herein, it is ordered that said demurrer be, and it is hereby sustained.

FRIDAY JANUARY 25TH, 1924.

Session resumed pursuant to adjournment, Mr. Justice Siddons presiding.

* * * * * * *

Come now the parties hereto by their respective attorneys of record and thereupon, respondent by his said attorney states to the court that he does not care to amend but will stand upon his answer, to which the court sustained a demurrer on the 9th day of January, 1924.

Whereupon it is considered that the prayers of the petition be granted, that the writ of mandamus issue as therein prayed, and that the petitioner recover of respondent his costs of suit, to be taxed by the clerk, and have execution.

From the foregoing judgment the respondent by his said attorney in open court notes an appeal to the Court of Appeals of the District of Columbia.

Attorney for respondent moved that issuance of writ of mandamus be stayed pending appeal, which is hereby ordered.

24 *Assignment of errors.*

Filed January 25, 1924.

* * * * * * *

The court erred:

1. In sustaining relator's demurrer and awarding the writ of mandamus.

2. In failing to hold that the respondent took jurisdiction of relator's entire claim, including the item of interest, and in the exercise of his discretion in a matter wholly within his jurisdction had found and determined that relator's claim for interest was not a loss justly and equitably repayable, and that said judgment was final and conclusive and beyond the power of the court to review.

3. In failing to hold that the respondent made adjustment and payment of relator's claim for net losses in such sum as the respondent had determined to be just and equitable and that the respondent's decision in that respect was conclusive and final.

4. In construing the acts of March 2, 1919, and November 23, 1921, so as to include interest on losses as a part of the net losses repayable under said acts, contrary to the construction relied upon by the respondent in arriving at the amount of relator's net losses justly and equitably to be allowed by him, the said respondent, under said acts.

5. In failing to hold that the act of November 23, 1921, did not enlarge relator's rights to recover and did not afford him any new or additional remedy permitting any payment not theretofore allowable under the act of March 2, 1919.

6. In failing to hold that the action in substance is a suit against the United States which in this behalf has expressly withheld consent to be sued.

7. In failing to dismiss the relator's petition.

C. EDW. WRIGHT,
Attorney for respondent.

Designation of record.

Filed January 25, 1924.

* * * * * * *

The clerk in making up the transcript of record on appeal in the above-entitled action will include the following:

1. Relator's petition and the rule to show cause.
2. Respondent's answer.
3. Relator's amendment to the petition.
4. The demurrer to the answer.
5. Memorandum opinion of the court.
6. Order sustaining demurrer.
7. Judgment awarding mandamus.
8. Notation of appeal.
9. Assignment of errors.
10. This designation.

C. EDW. WRIGHT,
Attorney for respondent.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, Morgan H. Beach, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 25, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 67884 at Law, wherein The United States of America, ex rel. Chestatee Pyrites & Chemical Corporation, is relator and Hubert Work, Secretary of the Interior, is respondent, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 5th day of February, 1924.

[SEAL.] MORGAN H. BEACH,
Clerk.

EW.

(Endorsed on cover:) District of Columbia, Supreme Court. No. 4116. Hubert Work, Secy., &c., appellant, vs. The United States of America ex rel. Chestatee Pyrites & Chemical Corporation. Court of Appeals, District of Columbia. Filed Feb. 7, 1924. Henry W. Hodges, Clerk.

○

15 In Court of Appeals of District of Columbia

Minute entry, filed April 7, 1924

HUBERT WORK, SECRETARY OF THE INTERIOR, APPELLANT,
vs.
THE UNITED STATES OF AMERICA EX REL. CHESTATEE Pyrites & Chemical Corporation.
No. 4116.

The argument in the above-entitled cause was commenced by Mr. C. E. Wright, attorney for the appellant, and was continued by Messrs. Hoke Smith and Edgar Watkins, attorneys for the appellee, and was concluded by Mr. C. E. Wright, attorney for the appellant.

16 In Court of Appeals of the District of Columbia

[Title omitted.]

Opinion

Before Associate Justices Robb and Van Orsdel; Martin, Presiding Judge, U. S. Court of Customs Appeals.

Mr. Justice Van Orsdel delivered the opinion of the court:

This appeal is from a judgment of the Supreme Court of the District of Columbia granting a writ of mandamus directing respondent, The Secretary of the Interior, to take jurisdiction of the claim of relator, appellee company, for interest paid on money borrowed to enable relator company to comply with requests and demands made upon it by the Department of the Interior, under the act of Congress of October 5, 1918, 40 Stat. 1009.

17 It appears that when the United States entered the War relator was the owner of a pyrites mine which it operated on a limited scale. In compliance with the demand upon it by the Government, in the way of enlargement of its plant to meet the war necessities, it was compelled to borrow the sum of $695,000 on which it obligated itself to pay interest at the rate of 6% per annum.

A claim was made by relator under the act of Congress approved March 2, 1919, 40 Stat. 1272, as amended by an act approved November 23, 1921, 42 Stat. 322, for reimbursement for the loss sustained by reason of its compliance with said request or demand. After three separate hearings and adjudications in the Department of the Interior, relator was awarded $693,313.79. In making the award the item for interest on the $695,000, borrowed as aforesaid, was disallowed. It is to compel the adjudication and allowance of this claim that the present suit was brought.

At the outset we are confronted by the oft-repeated contention of counsel for respondent, that the action of the Secretary of the Interior, in adjusting relator's claim for the net loss sustained, is final

and conclusive, and not subject to judicial review. The whole question of jurisdiction to direct by mandamus the adjudication
18 and allowance of claims arising under the present statute, was disposed of by this court in the recent case of Work, Secretary of the Interior vs. United States ex rel. Rives, — App. D. C. — 925 Fed. 225. There as here, the Secretary refused to consider the claim on its merits on the ground that under the statute it was not allowable. There was, therefore, no determination of fact made. Whatever the provision in the statute "that the decision of said Secretary shall be conclusive and final" may mean it has no bearing upon this case, since no adjudication upon the merits was made. The claim was disallowed solely upon the ground that there was no statutory authority for the adjudication and allowance of such a claim. We are called upon, therefore, to review merely the interpretation placed upon the statute by the Secretary, not to review an adjudication based upon issues of fact.

This narrows the case to the single question of law, whether the item of interest is embraced within the claim for net losses incurred by relator. The statute, among other things, provides: "That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals
19 named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said act."

Closely analogous to the situation here presented is a case arising out of the Civil War, where the Secretary of State, to meet a war emergency, called upon the State of New York to "adopt such measures as may be necessary to fill up your regiments as rapidly as possible. We need the men. * * * The Government will refund the State for the advances of troops as speedily as the Treasurer can obtain funds for that purpose." Subsequently Congress passed an act providing for the reimbursement of any State raising troops to protect the Nation for "the costs, charges, and expenses properly incurred."

To meet the call from the Government, the State of New York appropriated money to arm and equip troops, and issued 7% bonds to raise the money. In adjusting the claims of the State, the department reimbursed it for the amount actually expended, but
20 refused to pay the interest which the State had to pay on its bonds. The facts in that case are the same as in this, excepting that in this case the relator corporation is claiming for interest which it had to pay on its notes. The Supreme Court, in United States vs. State of New York, 160 U. S. 598, 620, holding the Gov-

ernment liable for the interest, said: "It would be a reflection upon the patriotic motives of Congress if we did not place a liberal interpretation upon those acts, and give effect to what, we are not permitted to doubt, was intended by their passage. * * * Liberally interpreted it is clear that the acts * * * created, on the part of the United States, an obligation to indemnify the States for any costs, charges, and expenses properly incurred for the purposes expressed in the act of 1861, the title of which shows that its object was 'to indemnify the States for expenses incurred by them in defence of the United States.'"

This is not a claim for interest upon an amount due the relator from the Government, but for expenses incurred in performing certain duties required of it by the Government. It is not compensation for the use of money due the claimant from the Government, but for money paid by relator in order to secure the means with which to meet the demands made upon it by the Government. As
21 was said in the New York case: "We can not doubt that the interest paid by the State on its bonds, issued to raise money for the purposes expressed by Congress, constituted a part of the costs, charges, and expenses properly incurred by it for those objects. Such interest, when paid, became a principal sum, as between the State and the United States: that is, became a part of the aggregate sum properly paid by the State for the United States. The principal and interest, so paid, constitutes a debt from the United States to the State." Being, therefore, an element of the expenses incurred, we think that in equity and justice the interest paid or obligated to be paid in this case, should be allowed. The statute is remedial, and should be construed liberally in order to carry out the purposes of its enactment.

The judgment is affirmed with costs.

22 In Court of Appeals of District of Columbia

[Title omitted.]

Judgment

Filed May 5, 1924

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE VAN ORSDEL.

May 5, 1924.

Presiding Judge George E. Martin of the U. S. Court of Customs Appeals sat in this case in the place of Mr. Chief Justice Smyth.

23 In Court of Appeals of the District of Columbia

[Title omitted.]

Petition for writ of error

Filed May 16, 1924

Comes now Hubert Work, Secretary of the Interior, appellant in the above-entitled cause and respectfully shows that on or about the 5th day of May, 1924, this court entered a judgment herein in favor of the appellee and against the appellant, affirming the judgment of the Supreme Court of the District of Columbia in favor of appellee, in which judgment of the Court of Appeals certain errors were committed to the prejudice of the appellant, all of which will appear more in detail from the assignment of errors filed with this petition.

The appellant further shows that judgment of the Court of Appeals in this case is subject to review by the Supreme Court of the United States under the provisions of paragraph 5 of section 250 of the Judicial Code in that existence and scope of a power or duty of an officer of the United States, to wit, the Secretary of the Interior, are drawn in question.

The appellant further shows that the judgment of the Court of Appeals is reviewable by the Supreme Court of the United States under the provisions of paragraph 6 of said section 250 of the Judicial Code, in that the construction of certain acts of Congress, to wit, the 5th section of the act of March 2, 1919 (40 Stat. 1272), and the act of November 23, 1921 (42 Stat. 322), was drawn in question by the appellant, who was the defendant below, and who

24 asserted and relied upon a construction of said statutes contrary to that placed thereon by the Court of Appeals in its judgment herein.

Wherefore appellant prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States, and that the mandate of this court be stayed until further order.

HUBERT WORK,
Secretary of the Interior.

By his attorney:

C. EDWARD WRIGHT,
Attorney.

25 In the Court of Appeals of the District of Columbia

[Title omitted.]

Assignment of errors

Filed May 16, 1924

And now comes the appellant by his attorney and says that in the record and proceedings of the Court of Appeals in the above-entitled cause and in the rendition of final judgment therein, manifest error has intervened, to the prejudice of said appellant, in this:

1. The court erred in affirming the judgment below.

2. The court erred in failing to hold that the Secretary took jurisdiction of appellee's claim and rendered judgment therein as to the amount of net losses by the Secretary deemed to be just and equitable and liquidated and paid the same to the appellee; and that the decision of the Secretary in making said allowance was conclusive and final.

3. The court erred in taking jurisdiction to review the Secretary of the Interior in a matter wholly within his jurisdiction and in which his judgment is by the statute made final and conclusive.

4. The court erred in holding that the acts of March 2, 1919, and November 23, 1921, require the Secretary of the Interior to allow interest paid or obligated on money borrowed as a part of the appellee's net losses for which it must be reimbursed.

5. The court erred in failing to hold that this is in substance a suit against the United States which in this behalf has refused to be sued.

C. EDWARD WRIGHT,
Attorney for Plaintiff in Error.

26 [File endorsement omitted.]

27 In Court of Appeals of District of Columbia

[Title omitted.]

Order allowing writ of error

Filed May 20, 1924

On consideration of the motion for the allowance of a writ of error to remove the above-entitled cause to the Supreme Court of the United States and to stay the mandate until further order, it is ordered by the court that said motion be, and the same is hereby, granted.

28 IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

Writ of error

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the Justices of the Court of Appeals of the District of Columbia, greating:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between Hubert Work, Secretary of the Interior, Appellant, and The United States of America ex rel. Chestatee Pyrites & Chemical Corporation, Appellee, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 20th day of May, in the year of our Lord one thousand nine hundred and twenty-four.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by ———

29 Citation in usual form showing service on Hoke Smith omitted in printing.

31 In Court of Appeals of the District of Columbia

[Title omitted.]

Præcipe for transcript of record

Filed May 20, 1924

The clerk will please to prepare a transcript of record on writ of error to the Supreme Court of the United States in the above-entitled cause and include therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry as to argument of case.
3. The opinion
4. The judgment.

5. Petition for allowance of writ of error and assignment of errors.
6. Order allowing writ of error.
7. Writ of error.
8. Citation.
9. This designation.

C. EDWARD WRIGHT,
Attorney for plaintiff in error.

Service acknowledged this 16th day of May, 1924.

HOKE SMITH,
Attorney for defendant in error.

[File endorsement omitted.]

32 Court of Appeals of the District of Columbia

Clerk's certificate

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 31, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Hubert Work, Secretary of the Interior, Appellant, vs. The United States of America ex rel. Chestatee Pyrites & Chemical Corporation, No. 4116, April term, 1924, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 21st day of May, A. D. 1924.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

○

INDEX

AUTHORITIES

In the Supreme Court of the United States

OCTOBER TERM, 1924

HUBERT WORK, SECRETARY OF THE INTERIOR, APPELLANT
v.
THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION
No. 401

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

This cause arises from a petition filed by appellee in the Supreme Court of the District of Columbia, wherein it asked a writ of mandamus to the Secretary of the Interior directing him to adjudicate appellee's claim for reimbursement of "net losses" alleged to have been sustained in producing pyrites. The decision in the trial court was for appellee. It was affirmed in the Court of Appeals, whence the case comes here.

The Act of Congress relied on by appellee is the War Minerals Relief Act, being Section 5 of the Act of March 2, 1919 (40 Stat. 1272) (set out in Appendix

A herein), as amended November 23, 1921 (the Amendment is set out in Appendix B herein). This Act of Congress authorized the Secretary of the Interior "to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce * * * pyrites * * *." It provided, further, that "The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable" and that "the decision of said Secretary shall be conclusive and final."

Appellee filed with the Secretary a claim for a large amount alleged to have been "net losses" sustained by it in producing pyrites. It included in its claim an item of interest paid on money borrowed to be used and which was used in the enterprise. The Secretary refused to allow this item and it is this item which is the subject of the present controversy.

Two questions are involved:

(1) Whether mandamus lies in this case, which depends upon whether the Secretary of the Interior, as a matter of fact, considered, passed upon, and disallowed this claim, or whether he refused to consider it at all. It may depend also upon the interpretation given to the provision of the act that the "decision of the Secretary shall be conclusive and final."

(2) Whether interest paid for money used in producing pyrites is properly included under "net losses" suffered in producing pyrites.

The court has ordered the submission of this case with and as a companion case to No. 272, *Hubert Work, Secretary of the Interior,* v. *The United States of America ex rel. Logan Rives,* which involves the construction of the same act of Congress. In the brief of the appellant in that case such questions as are common to the two cases are dealt with more fully than in this brief.

ARGUMENT

I

The Secretary of the Interior considered, passed upon, and disallowed this claim. He exercised his jurisdiction fully and his decision is conclusive and final. Having exercised his discretion and his decision being a possible one, mandamus does not lie

The theory of the petition for mandamus is that the Secretary of the Interior refused to pass upon the claim of the appellee for reimbursement of money expended by it as interest and that he may be compelled by mandamus to pass upon the claim. The legal doctrine asserted is good, of course. It has, however, no application in this case, if the Secretary of the Interior did consider, pass upon, and disallow the claim for interest as not being a loss suffered in producing or preparing to produce pyrites. If he exercised his discretion (and his duty here plainly involved the exercise of discretion), mandamus does not lie to correct an error, if he erred, unless his action was arbitrary and his decision was not even a possible one under the Act. (*Riverside Oil Co.* v.

Hitchcock, 190 U. S. 316, 324; *Ness* v. *Fisher*, 223 U. S. 683, 691; *Alaska Smokeless Co.* v. *Lane*, 250 U. S. 549, 555; *Hall* v. *Payne*, 254 U. S. 343, 347.)

We must look to the answer, the allegations of which the demurrer admits, to determine whether the Secretary did consider, pass upon, and disallow this claim or whether he simply refused to consider it at all.

The pertinent parts of the answer are paragraphs 11, 14, and 15 thereof (pages 8, 9, and 10 of the record). In paragraph 11 it is averred that certain items of the total claim were considered and disallowed. The exact language is: "But the cost of executive salaries, certain real estate, and the amount paid for interest, taxes, and legal services, together with the amount of ore sales and the salvage value of the property to the time of the armistice, were considered and determined not to be a part of the net losses justly and equitably due and payable to the relator under the relief act of Congress * * *." Paragraph 14 of the answer avers that the Secretary of the Interior again "refused to make allowance for interest as a sum justly and equitably due" in response to a request that the question be reopened. He refused to reopen the case. Paragraph 15 of the answer specifically denies that the claim as to interest was not considered and—

> on the contrary, avers the fact to be that he has considered and adjudicated said claim and has found and determined that the said items of

> interest, the amount of which has been computed and determined, and is known to him, are no part of the amount of losses which he can regard or does regard as justly and equitably due from the United States to the relator under the provisions of the acts of March 2, 1919 and November 23, 1921. He avers that he and his predecessors in the office of Secretary of the Interior have considered each and every element or item of alleged loss exhibited in relator's claim and have found, adjusted, and ordered payment to be made of the amount of relator's net loss determined by the Secretary to be just and equitable and therefore due and payable under the provisions of said acts, to wit, the total sum of $693,-313.79, for which warrants have issued to the relator and the said amount has been duly paid to and accepted by the relator.

We submit that it is impossible in the face of the foregoing to say that the Secretary of the Interior refused to consider and adjudicate this claim for interest. But that premise is essential to the propriety of mandamus. If, as the answer shows, the Secretary did consider this claim and, in the exercise of his discretion, disallowed it on the ground that it was not a loss within the meaning of the Act, then, even though he erred, he is not reviewable by mandamus, if his decision was a possible one. (Cases cited, *supra*.)

II

By the terms of the act the decision of the Secretary is conclusive and final. He can not be reviewed by any other authority either in an action for mandamus or otherwise

The War Minerals Relief Act was a gratuitous tender of money from the public treasury to make good losses sustained in private enterprises undertaken in the hope of profit, although stimulated by the government in the war emergency. Those who suffered losses had no legal claims whatever on the United States. Certainly the United States had the right to circumscribe its gift by any conditions it chose to make. It did prescribe conditions. The most important of these was that the Secretary of the Interior should be the sole judge as to what claims should receive reimbursement. It would be impossible for any legislative intent to be expressed more clearly than this intent. "*The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable;* * * * *the decision of the said secretary shall be conclusive and final.*"

If the Supreme Court of the District of Columbia by mandamus or otherwise can reverse the decision of the Secretary of the Interior, then certainly his decision is not "conclusive and final," as the act says it shall be.

Shall we say that the provision that the Secretary's decision shall be "conclusive and final" has no meaning? There is no justification for so saying.

To so say violates an elementary rule of statutory construction.

What then *is* the meaning of this provision?

It can not be made more simple or more explicit than the words employed, "The secretary's decision shall be conclusive and final."

We submit that this action is directly in the face of the necessarily implied prohibition contained in the language used by Congress.

The Secretary's decision as to *what* is to be conclusive and final? Obviously as to that concerning which alone he was required to make decision in the administration of the act, whether an alleged claim was or was not a loss within the meaning of the act.

If he disallowed any claim, he necessarily disallowed it *because he decided it was not a loss within the meaning of the act.* In this instance he did exactly that, no more, no less. If his decision to that effect here is, as is contended, equivalent to a refusal to take jurisdiction, then he refused to take jurisdiction in every case in which he disallowed a claim. If, upon that theory, mandamus lies here, it lies as to every claim he disallowed. So the Secretary's decision would be "conclusive and final" only if *against* the United States. Such a conclusion makes the provision valueless.

The provision that the Secretary's decision shall be "conclusive and final" can be given effect only if it is held that in no case will mandamus lie against him except to compel him to permit the mere pre-

sentation of a claim, never to force upon him a decision either as to the construction of the act or as to any issue of fact presented under it.

The intention of Congress that the Secretary should be the sole arbiter and judge as to what claims should be allowed appears again in the last paragraph of Section 5: "That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States." Strictly speaking an action for mandamus against the Secretary of the Interior to compel him to pay a given sum out of the national treasury may not be a suit against the United States. Substantially it is. The point we make, however, is that this provision makes certain the intent, if it were not certain otherwise, that the Secretary alone is to decide as to what claims shall be allowed. If he hears a claim and errs in disallowing it, there is no remedy. Even if he refuses to hear a claim, upon no theory consistent with the intent of Congress can mandamus go further than to require him to *hear* it. It can take away no part of his discretion to allow it or disallow it "as he shall determine to be just and equitable."

III

Interest paid for money borrowed and used in producing pyrites is not properly included within "net losses" suffered in that enterprise

The decision of the Secretary of the Interior that an expenditure for interest was not properly reimbursable as a net loss was not only a possible decision but, we think, the only possible decision.

The Act requires the Secretary to pay "such net losses as have been suffered by any person, firm, or corporation, by reason of producing, or preparing to produce, either manganese, chrome, pyrites, or tungsten * * *." It provides that "The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; * * * the decision of said Secretary shall be conclusive and final * * *." And it provides further "that no profits of any kind shall be included in the allowance of any of said claims."

How are net losses suffered in any enterprise to be ascertained? By deducting from what is put into the enterprise what is taken out. But money spent for the use of money in an enterprise is not itself put into the enterprise at all. It goes into the pockets of the lender as the result of a transaction wholly independent of the enterprise. It has no place in the calculation of losses incident to the enterprise.

Suppose two cases. *A* has $100,000. He invests it in the production of pyrites. At the end of a period he disposes of ore and property for $90,000. His loss is $10,000. He would be entitled to reimbursement in that amount. *B* has $100,000, which he has borrowed. He invests it in the production of pyrites. At the end of a period he disposes of ore and property for $90,000. Has not B's loss in the enterprise been identical with that of A? If *B* paid some one $5,000 for the use of his $100,000 and may therefore claim that as an additional loss, *A* may as properly claim as a loss the $5,000 interest he might have had on his

$100,000 and did not get. Shall we then say that, in calculating either losses or profits in a given enterprise, interest on capital is to be considered? The courts say, at least as to the calculation of net profits, it is not to be considered.

Thus it has been held that the term "net profits" does not mean "what is made over the losses, expenses, and *interest on the amount invested*. The term includes simply the gain that accrues on the investment, after deducting the losses and expenses of the business. If but two or three per cent is realized on the amount put in, it may be a poor business, but still there would be net profits, even if the legal rate of interest were ten per cent or greater." (*Tutt* v. *Land*, 50 Georgia 339, 350.) To the same effect is *Paine* v. *Howells et al.*, 90 N. Y. 660, 661:

> We do not think that interest upon capital is an expense to be deducted in ascertaining net profits. These profits themselves constitute the earnings of the capital, but may exceed or fall short of the legal rate of interest. They are the product of the investment, and the capital is used, not to earn interest, but profits.

To the same effect also is *Sanford* v. *Barney et al.*, 50 Hun. 108.

If interest on capital is not to be considered in determining whether there have been "net profits," by precisely the same reasoning it is not to be considered in determining whether there have been "net losses." And the principle is the same whether the capital is borrowed or is not borrowed.

The Court of Appeals as to this point based its decision on the case of *United States* v. *State of New York*, 160 U. S. 598, 620 (see opinion of the Court of Appeals, page 15 of the record, l. c. 16), but that case is in no sense analogous with this. In that case the court was construing an Act of Congress providing for indemnifying the States for "costs, charges, and expenses properly incurred" in raising and supplying troops to suppress the rebellion. New York State had been compelled to issue bonds to procure the necessary funds. It asked reimbursement of the interest paid on these bonds. This court held that interest so paid under such circumstanes was rightfully classed, as "costs, charges, and expenses properly incurred" in raising and supplying troops. It would seem that no other conclusion could have been reached. The State of New York was not voluntarily embarking on an enterprise offering large profits. It was morally compelled to raise and equip troops. What it had to pay for the use of the necessary funds was obviously a part of the "costs, charges, and expenses" of the undertaking. But "net losses" suffered in a business enterprise (as producing pyrites), voluntarily entered into in the hope of realizing "net profits," is in no sense language so general or all inclusive as "costs, charges, and expenses." "Losses" and "profits" are well understood terms in the business world, with settled meanings, and neither includes interest. The words, "net losses," are of course to be construed in their ordinary and usual meaning and, so construed, they do not include the claim for interest urged in this case.

III

CONCLUSION

The decision of the Court of Appeals should be reversed for two reasons: (1) The Secretary of the Interior, having fully exercised his discretion with reference to this claim, may not be reviewed by mandamus; his decision is conclusive; (2) he correctly held that interest as paid here was not a "net loss" within the meaning of the Act of Congress.

JAMES M. BECK,
Solicitor General.

MERRILL E. OTIS,
Special Assistant to the Attorney General.

NOVEMBER, 1924.

APPENDIX A

Section 5 of the Act of Congress entitled "An Act to Provide Relief in Cases of Contracts Connected with the Prosecution of the War and for Other Purposes," approved March 2, 1919:

SECTION 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and

that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further,* That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the

right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Appendix B

Amendment of November 23, 1921:

Provided, That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation, or appeal, shall be reimbursed such net losses as they

may have incurred and are in justice and equity entitled to from the appropriation in said act.

If in claims passed upon under said act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts.

○

IN THE

Supreme Court of the United States

OCTOBER TERM, 1924.

No. 401

HUBERT WORK, SECRETARY OF THE INTERIOR,
Appellant,

vs.

THE UNITED STATES OF AMERICA, EX. REL.,
CHESTATEE PYRITES & CHEMICAL CORPORATION.

APPEALED FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR

CHESTATEE PYRITES & CHEMICAL CORPORATION.

By
EDGAR WATKINS,
403 Atlanta Trust Bldg.,
Atlanta, Georgia.

HOKE SMITH, Washington, D. C., and
MAC ASBILL,
403 Atlanta Trust Bldg.,
Atlanta, Georgia,
Of Counsel.

PRESS OF JOHNSON-DALLIS COMPANY, ATLANTA

SUBJECT INDEX.

TABLE OF CASES.

Supreme Court of the United States

OCTOBER TERM, 1924.

HUBERT WORK, SECRETARY OF THE INTERIOR,
Appellant,

Vs.

THE UNITED STATES OF AMERICA, EX REL., CHESTATEE PYRITES & CHEMICAL CORPORATION.
Appellees.

No. 401

Appealed from the Court of Appeals of the District of Columbia.

GENERAL STATEMENT.

The exigencies of war requiring the production of certain minerals, including pyrites, from which sulphuric acid is made, on October 5, 1918, The Congress authorized the taking over, development and operation of mines in which existed such minerals. (See Appendix.)

The Chestatee Pyrites & Chemical Corporation owned one of such mines in which existed pyrites in commercial quantities. (Par. 4, petition Tr. 2). The Secretary of the Interior having requested of said Corporation, the relator here, the increased production of pyrites as authorized by

said Act, relator expended large sums in compliance with such request and suffered "net losses".

In order to pay such net losses Congress passed the Act of March 2, 1919.

Stating the conditions during and after the war and the reasons for the Act of March 2, 1919, the Committee of Mines and Mining of the House of Representatives said:

Statement By Committee Of The House

> "In order to secure production of these minerals during the war, the Government promised that it would establish and maintain reasonable prices for the duration of the war and two years thereafter. This promise was fulfilled by the passage of the original war minerals bill approved October 5, 1918, which carried an appropriation of $50,000,000, to enable the Government to administer same.
>
> "Because of the sudden termination of the war, this bill was not administered. To have done so would likely have resulted in a loss of the entire appropriation. Inasmuch as it was a war measure it was deemed best to abandon it and make settlement with those the Government had requested to produce.
>
> "Accordingly, Congress passed the said act of March 2, 1919, which reserved $8,500,000 out of the $50,000,000 carried in the original war minerals bill with which to pay the net losses suffered by said war minerals producers. This $8,500,000 was only a guess at the actual losses sustained by the war minerals producers, because neither their number nor investments were known when the act of March 2, 1919, was passed."

Relator seasonably presented and diligently prosecuted its

claim for "adjustment and payment" of its "net losses" in a sum "just and equitable". Said the Court below:

Statement of the Court of Appeals

"It appears that when the United States entered the War relator was the owner of a pyrites mine which it operated on a limited scale. In compliance with the demand upon it by the Government, in the way of enlargement of its plant to meet the war necessities, it was compelled to borrow the sum of $695,000 on which it obligated itself to pay interest at the rate of 6 per cent per annum.

"A claim was made by relator under the act of Congress, approved March 2, 1919, 40 Stat. 1272, 1274, as amended by an act approved November 23, 1921, 42 Stat. 322 for reimbursement for the loss sustained by reason of its compliance with said request or demand. After three separate hearings and adjudications in the Department of the Interior, relator was awarded $693,313.79. **In making the award** the item for interest **on the $695,000,** borrowed as aforesaid, was **disallowed.** It is to compel the adjudication and allowance of this claim that the present suit was brought." (Transcript 15).

While relator borrowed as stated by the Court $695,000.00, that sum did not cover the total expenditures nor the total losses.

This suit originated in the Supreme Court of the District of Columbia where the prayer was:

Prayer for Relief

"That a writ or mandamus may be issued directing respondent, Hubert Work, Secretary of the Interior,

to take jurisdiction of the claim of the relator for expenditures made and obligations for interest incurred in good faith, as hereinbefore set forth, and to allow such sum as may be just and equitable, and to adjust and pay relator's net losses, consisting of interest, thus arising in preparing to produce said ores at the requests and demand of the Department of the Interior, and to ascertain the amount thereof and make award therefor." (Transcript 5, 6).

To the petition the respondent answered and relator demurred to the answer. In the course of this answer respondent said:

Interest Denied By Respondent

"The cost of executive salaries, certain real estate, and the amount paid for interest, taxes, and legal services, together with the amount of ore sales and the salvage value of the property to the time of the armistice, were considered and determined **not** to be a part of the net losses justly and equitably due and payable to the relator under the relief acts of Congress, and **were deducted from the total expenditures.** . . . .

"The question of repayment of interest charges in war minerals relief claims has had full consideration by the department. In the case of the Chestatee Pyrite claim, to which you refer particularly, the question of interest was covered by briefs and by oral argument both before the commissioner and the Secretary of the Interior. The Secretary, on September 29, 1922, held that allowance of interest **was not warranted, under the act,** and suggested that if Congress intended to include expenditures for interest on borrowed capital, as suggested by counsel, claimant was not precluded from relief by Congress direct.

"All war mineral relief claims have been and are being adjusted as to interest in accordance with the policy outlined by the Secretary in his final decision in the Chestatee claim. Under the circumstances, I feel that my predecessors have, so far as the department is concerned, settled the question finally." (Transcript 9).

In ruling on relator's demurrer to respondent's answer, Mr. Justice F. L. Siddons of the Supreme Court of the District, said:

Statement by Supreme Court of The District

"The answer of the respondent avers that the Secretary of the Interior:

" 'On September 29, 1922, held that allowance of interest was not warranted, under the act, and suggested that if Congress intended to include expenditures for interest on borrowed capital, as suggested by counsel, claimant was not precluded from relief by Congress direct.'

"The demurrer to this answer raises practically a single question of law." (Transcript 12).

After citing Seaboard Air Line R. Co. vs. United States, 261 U. S. 299; Work, Secretary, vs. United States, 295 Fed. 225, 54 App. D. C. 84 and United States vs. State of New York, 160 U. S. 598, the demurrer was sustained and respondent having declined to amend, the Court ordered:

Decree

"That the prayers of the petition be granted, that the writ of mandamus issue as therein prayed." (Transcript 13).

Respondent then took an appeal to the Court of Appeals

of the District of Columbia where the judgment of the lower Court was affirmed. (See opinion, Transcript 15, seq., 298 Fed. 839). Thence this appeal was taken and there are two issues of law:

Questions Presented

(1) Is mandamus the appropriate remedy?

(2) Is interest paid and contracted to be paid expenditures made and obligations incurred?

MANDAMUS PROPER UNDER THE FACTS HERE.

STATEMENT OF FACTS.

From the general statement of the case (ante 1-5) the letters of the Secretary of the Interior (appendix post. 27,32) and the findings of the Court of Appeals it appears as stated by that Court (Transcript 16):

> "The Secretary refused to consider the claim on its merits on the ground that under the statute it was not allowable. There was, therefore, no determination of fact made. Whatever the provision in the statute 'that the decision of said Secretary shall be conclusive and final' may mean it has no bearing upon this case, since no adjudication upon the merits was made. The claim was disallowed **solely** upon the ground that there was no statutory **authority** for an adjudication and allowance of such claim. We are called upon, therefore, to review merely the interpretation placed upon the statute by the Secretary, not to review an adjudication based upon issues of fact." (Bold Face supplied).

Argument and Authorities

It is this statutory construction that is involved here and the courts have always held that the construction of a statute was finally determinable only in a court. In Work vs. Mosier, 261 U. S. 352, at pages 358 and 359, Mr. Chief Justice Taft said:

> "The question whether bonuses were to be included in royalties is a **matter of statutory construction,** not finally entrusted to the discretion of the Secretary but **determinable in court** at the instance of the beneficiaries as of right." (Bold Face supplied).

The same idea was stated and emphasized in the case of Work vs. McAlester, 262 U. S. 200, 208, 209. There the Chief Justice quoted from the case of Roberts vs. United States, 176 U. S. 221, 231, and showed that although the administrative officer had read the law and had, in a certain sense, considered it, nevertheless his act in so doing was ministerial and where the law directed, he had no discretion, but must obey. That is what is contended for here. If the law means what we contend it means, then although the Secretary considered the law, that does not include his full duty. He must do more than consider, he must enforce the law, and if he does not the courts will issue the writ of mandamus. This rule of law is stated in the opinion of the Court of Appeals of the District of Columbia in Work ex rel. Rives, 295 Fed. 225, 54 App. D. C. 84, now pending before this Court (1).

Additional Authorities Holding Mandamus Proper Remedy

(1) The Mosier and McAlester cases cited in the argument but follow former decisions of this Court. For the convenience of the Court we refer to others.

In Lane vs. Hoglund, 244 U. S. 174, this Court said (page 181):

The Secretary is by the statute (post 21) required to "adjust, liquidate and pay . . . net losses" . . . (post 22) "for **expenditures** so made (that is, for producing or attempting to produce pyrites) or **obligations** so **incurred**". That "expenditures" were made and "obligations" incurred for interest for the purposes stated in the statute is admitted. The Secretary, however, so construed the law as to eliminate from "net losses" all payments of or obliga-

---

"True, this court always is reluctant to award or sustain a writ of mandamus against an executive officer, and yet cases sometimes arise when it is constrained by settled principles of law and the exigency of the particular situation to do so. Kendall vs. United States, 12 Pet. 524, 9 L. Ed. 1181; United States vs. Schurz, 102 U. S. 378, 26 L. Ed. 167; Roberts vs. United States, 176 U. S. 221, 44 L. Ed. 443; Garfield vs. United States, 211 U. S. 249, 53 L. Ed. 168; Ballinger vs. United States, 216 U. S. 240, 54 L. Ed. 464. . . . This, we think, is such a case. As quite opposite, we excerpt the following from the unanimous opinion in Roberts vs. United States, supra:

" 'Unless the writ of mandamus is to become practically valueless, and is to be refused even where a public officer is commanded to do a particular act by virtue of a particular statute, this writ should be granted. Every statute to some extent requires construction by the public officer whose duties may be defined therein. Such officer must read the law, and he must, therefore, in a certain sense, construe it, in order to form a judgment from its language what duty he is directed by the statute to perform. But that does not necessarily and in all cases make the duty of the officer anything other than a purely ministerial one. If the law direct him to perform an act in regard to which no discretion is committed to him, and which upon the

tions incurred to pay interest. If, as we hope later in this brief to demonstrate, such interest paid and to be paid comes within the statute, it follows that the mandamus properly issued, "unless the writ of mandamus is to become practically valueless". Otherwise, quoting from Roberts vs. United States, 176 U. S. 221, 231:

"It would relieve from judicial supervision all execu-

---

facts existing, he is bound to perform, then that act is ministerial, although depending upon a statute which requires, in some degree, a construction of its language by the officer. . . . . ' ".

So in the instant case, while the Secretary was required "in a certain sense" to construe the law, and to determine for himself what was intended by "net losses", his duty was nevertheless ministerial and reviewable by mandamus.

Not a Suit Against the United States

This is not a suit against the United States. In Payne vs. Central Pacific Railway Company, 255 U. S. 225, Mr. Justice Van Devanter, delivering the unanimous opinion of this Court, said:

"We are asked to say that this is a suit against the United States, and therefore not maintainable without its consent; but we think the suit is one to restrain the appellants from canceling a valid indemnity selection through mistaken conception of their authority, and thereby casting a cloud on the plaintiff's title. Ballinger vs. United States, 216 U. S. 240, 54 L. Ed. 464, 30 Sup. Ct. Rep. 338; Philadelphia Co. v. Stimson, 223 U. S. 605, 619, 620, 65 L. Ed. 570, 576, 577, 32 Sup. Ct. Rep. 340; Lane v. Watts, 234 U. S. 525, 540, 58 L. Ed. 1440, 1456, 34 Sup. Ct. Rep. 965." (65 L. Ed. 604).

tive officers in the performance of their duties, whenever they should plead that the duty required of them arose upon the construction of a statute, no matter how plain its language, nor how plainly they violated their duty in refusing to perform the act required."

TO PAY INTEREST IS AN EXPENDITURE, TO AGREE TO PAY INTEREST IS TO INCUR AN OBLIGATION.

STATEMENT:

This title refers to Paragraphs 1, 4 and 7 of the assignment of errors. There is no dispute about the fact that relator, appellee here, borrowed money for the purposes authorized by the law and paid some interest thereon and obligated itself to pay further interest. The amount of this interest is not questioned. Appellant in his answer (Transcript 10) says (he):

Respondent Refused to Pay Obligation or Expenditures for Interest

> "avers the fact to be that he has considered and adjudicated said claim and has found and determined that the said items of interest, the amount of which **has been computed and determined, and is known to him,** are no part of the amount of losses which he can regard or does regard as justly and equitably due from the United States to the relator under the provisions of the acts of March 2, 1919 and November 23, 1921."

The Secretary of the Interior is directed to adjust and pay "net losses". In determining what items enter into a total designated as net losses the statute defines the things

that must be considered and among these are "expenditures so made and obligations so incurred". The word "so" in the above quotation refers to production of and preparing to produce pyrites.

Mr. Secretary Fall, followed by Mr. Secretary Work, stated definitely that expenditures made and obligations incurred for interest could not be considered but that if such expenditures and obligations were to be recovered, application would have to be made to The Congress. It is the contention of the relator here that Congress had already directed the consideration of such items and that as a matter of law the secretaries failed to perform what Congress had placed upon them as a ministerial duty when they refused to give consideration to such items.

"Interest", said Mr. Secretary Work, appellant, in a letter to the Senate Committee, of March 15, 1924, has "never been allowed for payment." (Appendix post 27).

Interest Paid Considered by House Committee

The Committee of Mines and Mining in the House, speaking of this case (Appendix post 28) said:

> "One of the questions pending in the courts is the item of 'interest paid' on moneys borrowed as an item of 'net losses suffered'. Many of the claimants are still paying interest on 'obligations incurred' in order to enable them to comply with the Government's request. If 'interest paid' is ultimately to be a proper item of loss, such claims should be speedily adjusted and paid as such loss increases each day.
>
> "In view of the cases cited, by Mr. Justice Siddons, in his opinion above set forth, and particularly the case of United States vs. State of New York (160 U. S.

598), it would apparently seem that 'interest paid' may be ultimately determined to be a part of the net losses to be repaid to claimants in a proper case; therefore the Secretary of the Interior should be provided with ample funds to promptly liquidate these claims in the event such obligations determined are to be a part of the net losses."

After this declaration The Congress passed the Act of June 7, 1924, which removed any limitation of amount for which adjustments and payments may be made. (Appendix, post 33). Thus, if as said by Honorable Secretary re lator should ask "relief by Congress direct," Congress has definitely said that such relief should be granted.

It is a misapprehension of the facts of this case to treat relator's claim as one seeking to be paid interest on the amount due it, and it is believed that the Department of the Interior fell into error in not distinguishing this claim from those in which interest proper is demanded.

Interest, however, in its legal sense is recoverable as shown by the Seaboard case 261 U. S. 299 and other cases cited in note 2, and for stronger reasons recovery for ex-

---

Interest as Such Proper To Be Allowed

(2) In Seaboard Air Line Railway vs. United States, 261 U. S. 299, this Court said:

"The above rule referred to, that in the absence of agreement to pay or statute allowing it, the United States will not be held liable for interest on unpaid accounts and claims, does not apply here. The requirement that 'just compensation' shall be paid is comprehensive, and includes all elements, and no specific command to include interest is necessary when interest

penditures made and obligations incurred is authorized.

The relator in "good faith" in a legitimate attempt to produce pyrites; for the use of borrowed money prior to the

---

or its equivalent is a part of such compensation. . . ."

In U. S. vs. Highsmith, 257 Fed. 401, affirmed 255 U. S. 170, 65 L. ed. 569, the Circuit Court of the Eighth Circuit followed the case of the United States v. Rogers, 257 Fed. 397, holding that in condemnation proceedings interest was recoverable from the time the government acted. The Rogers case was affirmed by the Supreme Court, 255 U. S. 163, 65 L. ed. 566, thus affirming that "just compensation" includes interest on claims against the government.

Treating the interest as a part of a "just compensation required by the Fifth Amendment to the Constitution" the court citing the New York case, placed its decision "on equitable principles."

The Act of October 5th, 1918, being approved so near the conclusion of the war no action was had thereunder. Relator's plant, mine and deposit of pyrites had in effect been "taken over" prior to October 5th, 1918, under the "request" of the Secretary of the Interior when such "request" of the Secretary meant in view of the urgent needs of the government and the patriotism of realtor's officers a demand that could not be resisted.

With a statutory right to "just compensation" which includes interest, relator could rely on his government for justice and the Congress showed such faith was not unfounded by passing the Act of March 2, 1919, 40 Stat. 1274, U. S. Comp. Stat. 1919 Supp. p. 800. (See report Com. of House, ante 11 and post 28).

This Act directs the Secretary of the Interior to adjust, liquidate and pay net losses suffered

Armistice, as said by the respondent—appellant "paid for interest"; which, says respondent, was "deducted from the total expenditures" in determining relator's net losses. Here

---

> "By any . . . corporation, by reason of production or preparing to produce, . . . pyrites, . . . in compliance with the request or demand of the Department of Interior, . . . to supply the urgent needs of the nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, . . . The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable . . . That no claim shall be allowed or paid . . . unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred . . . were made in good faith . . . That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred . . . in a legitimate attempt to produce . . . pyrites, . . . and that no profits of any kind shall be included . . ." (For statute in full see Appendix post 21-23).

The original appropriation of $50,000,000.00 in the Act of October 5th, 1918, was retained up to eight and a half million and

> ". . . all payments . . . shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed."

Since then, by Act of June 7, 1924 (appendix post 33) "the limitation (of $8,500,000.00) in said Act . . . . is repealed."

is a definite and unequivocal admission that certain expenditures were made but deducted. The money was paid for interest; it was lost, and under the letter of the statute the Secretary should have considered such "expenditures so made" and made adjustment and payments therefor. Anything less disregards the statute and fails to be legal, "just and equitable".

Relator had not paid, being unable so to do because of its "losses," all the money it had borrowed and it had prior to the Armistice executed notes for $695,000 to one lender and notes for smaller amounts to other creditors and it also owed open accounts for machinery, supplies, etc.

As the obligations incurred by relator exceed the amount that has been paid it, all interest claimed by relator will go in liquidation of obligations incurred. Relator lost everything in complying with the war demands of its government. It seeks to recover additional amounts of its "net losses" to be used towards paying its obligations. To add to its former awards an award of all amounts of interest paid and which it is obligated to pay will not meet its losses nor enable it to pay all it owes.

ARGUMENT AND AUTHORITIES.

The history of the legislation given in the Appendix shows a legislative intention and a continued legislative purpose to see that those who freely dedicated their property to the service of their country when such a dedication was absolutely essential, should receive "just compensation" and a "just and equitable" settlement of their "net losses."

"Just compensation" in the Act of October, 1918, comprehends interest (2), and the amendments were certainly not intended to lessen the rights of those who had cheerfully offered all they had on the altar of their country.

Liberal Construction Required for Relief Statutes.

Statutes like this under which relator claims "should be construed liberally," "just" means a "perfect equivalent for the property taken" and "equitable" requires that "the rules of law applicable to the case shall be construed liberally in favor of the complainants" (3).

"Just" and "Equitable," Demand a Liberal Construction.

(3) The law under which relator claims as said by the Supreme Court in construing another statute having a similar purpose

> "is a remedial one and should be construed liberally to carry out the wise and salutary purposes of its enactment."

Stewart vs. Kahn, 78 U. S. 11 Wall. 493, 504.

"Just" as was said by Mr. Justice Brewer, in Monongahela Navigation Company vs. United States, 148 U. S. 312, 326, is an "emphatic" term, when used as in the controlling statute here, and means that the compensation

> "must be a full and perfect equivalent for the property taken"

Again in the same case the learned justice said:

> "And in this there is a natural equity which commends it to every one. It in no wise detracts from the power of the public to take whatever may be necessary for its uses; while, on the other hand, it prevents the public from loading upon an individual more than his just share of the burdens of the government, and says that when he surrenders to the public something more and different from that which is exacted from

The Issue Here Has Been Decided

The right in this case to receive the interest paid and obligated to be paid is fully determined in the case of United States vs. State of New York, 160 U. S. 598. This case relied upon by relator, by both the lower Courts and by the Legislative Committees, presents a legal principle exactly similar to the one sought to be applied here.

---

other members of the public, a full and just equivalent shall be returnable to him."

Webster defines equitable as

"Marked by due consideration for what is fair, unbiased or impartial."

The Supreme Court in the Seaboard case above merely announced a universal rule and the obligation of a government to be honest when it said:

"The compensation to which the owner is entitled is the full and perfect equivalent of the property taken. Monongahela Nav. Co. vs. United States, supra. It rests on equitable principles, and it means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken. United States vs. Rogers (C. C. A. 8th C.) 168 C. C. A. 437, 259 Fed. 397, 400. He is entitled to the damages inflicted by the taking. Northern P. R. Co. vs. North American Teleg. Co. (C. C. A. 8th C.) L. R. A. 1916 E, 572, 144 C. C. A. 489, 230 Fed. 347, 352, and cases there cited."

Appellant's Arguments Stated and Refuted

In the Court below Appellant's counsel urged that as the claims filed exceeded the appropriation made no

During the War Between the States appeals were made by Secretary Seward for aid from the States. To the State of New York, he telegraphed:

> "Adopt such measures as may be necessary to fill up your regiment as rapidly as possible. We need the men. . . . The government will refund the state for the

---

interest should be paid. This was a non sequiter, but had this been a valid argument it has been answered because, with this case before it, The Congress increased the authority to allow claims up to $50,000,000. (See Appendix post p. 33).

Appellant urged in his brief below that interest was analogous to profits and that as profits are not permitted interest cannot be. This argument was illustrated by showing the results when one man borrows money and another man furnishes his own money. It is not necessary to discuss the rights to receive compensation therefor of the man who furnishes money. That is not this case. And the argument of the Appellant that interest is profit has no application. Profit is something received. Here interest was paid and agreed to be paid. The same argument might be made that machinery ought not to be paid for because profits may have been made by the seller. The Chestatee Pyrites & Chemical Corporation has never received interest or profits. All it asks is that its "expenditures made" and its "obligations incurred" be met as Congress said they should be met.

What arguments, if any, Appellant will urge in this Court we do not know at the time this brief is written. In order to comply with the rules of this court we must file this brief one week before the case is argued. To do this, the brief must be sent to the printer without waiting longer for Appellant's brief now overdue.

> advances of troops as speedily as the treasurer can obtain funds for that purpose."

Congress subsequently passed an act declaring that: "The cost, charges and **expenses properly incurred**" by any state in raising troops to protect the nation would be met by the general government. The State of New York appropriated money to arm and equip troops and issued short time, 7 per cent bonds and also utilized its canal fund to raise the money. The State was reimbursed the amount it actually expended in equipping the troops, but there was a refusal to pay the interest which the State **had to pay** on its bonds and to the Canal fund. Suit was brought by the State of New York to recover this interest.

In delivering the opinion of the court Mr. Justice Harlan, at page 620, said:

> "It would be a reflection upon the patriotic motives of Congress if we did not place a liberal interpretation upon those acts, and give effect to what, we are not permitted to doubt, was intended by their passage."

He further said:

> "Liberally interpreted, it is clear that the acts .... created on the part of the United States an obligation to indemnify the states for any costs, charges, and expenses properly incurred for the purposes expressed in the Act of 1861, the title of which shows that its object was 'to indemnify the states for expenses incurred by them in defense of the United States'."

The court sustained the claim of the State of New York for the interest not only that paid the public but that accrued in its canal fund. "Expenses . . . incurred" in the statute under which New York recovered is no stronger than "money expended and obligations incurred", in the statute here.

Here fitting the exact language of the statute, expenditures were made in order to get money with which to prepare to produce and to produce pyrites for the urgent needs of the government. Relator got no profit either on its capital or for its services. All it asks here is for the return of its net losses which it incurred; and that in determining such net losses all its expenditures and all its obligations incurred should be, as the statute says, considered and applied in arriving at the total amount. That relator is entitled to this is shown by the New York case above, at page 624. Further discussing the question in that case the court said:

> "We are of opinion that the claim of the state for money paid on account of interest to the commissioners of the canal fund is not one against the United States for interest as such, but is a claim for costs, charges and expenses properly incurred and paid by the state in aid of the general government, and is embraced by the act of Congress declaring that the states would be indemnified by the general government for moneys so expended." (Bold face supplied).

The State of New York recovered interest paid its creditors and also interest assigned to another department of the State Government and we respectfully submit that the money expended and the obligations incurred should be paid relator and that the judgments of the lower courts should be affirmed.

EDGAR WATKINS,
Attorney for Relator.

HOKE SMITH
and
MAC ASBILL
of Counsel.

APPENDIX

HISTORY OF THE RELIEF ACT.
ORIGINAL ACT OF OCTOBER 5, 1918.

During the war the Government found itself short of certain necessary minerals including pyrites. By Act of October 5th, 1918, Sec. 1; 40 Stat. 1009, seq., United States Comp. Stat. 1919, Supp., pp. 691, seq., it was provided that such minerals were defined as "necessaries". Section 3 authorized the President to "take over any of said necessaries" and any "deposit or mine . . . . and to develop and operate such mine or deposit . . . . or plant."

When such plant, mine or deposit was so taken over it was provided in the same section: "The United States shall make **just compensation** . . . . for the taking over, use, occupation or operation . . . . of any such necessaries, ... deposit, mine, or plant or part thereof." To pay this "just compensation," $50,000,000 were appropriated by section 6 of the Act.

FIRST AMENDMENT

Act March 2, 1919.

By Act of March 2nd, 1919, Chapter 94, 40 Stat. 1272, 1274, Section 5, The Congress recognized that the War had ended and that the promise of "just compensation" made in the Act of October 15th, 1918, should be kept. It therefore, authorized the Secretary of the Interior to—

> "adjust, liquidate and pay such net losses as have been suffered by any person, firm or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the

Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled 'An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply.'

"The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided." (U. S. Comp. Stat. 1919, Supp., Vol. 1, p. 800).

It was then provided that the payments

"shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: Provided, however, That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: And provided further, That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder, and filed with the Department of the Interior within three months from and after the approval of this Act: And provided further, That no claim shall

be allowed or paid by said Secretary unless it shall appear to the satisfaction of the Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance; And provided further, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included."

It was then provided that the adjustment by the Secretary should not be a bar to the Government to recover payments that had been fraudulently obtained.

SECOND AMENDMENT:

Congress Dissatisfied with Administration of the Law

The administration of the War Minerals Relief Act was extremely unsatisfactory to claimants in that the Department of the Interior adopted every possible technical method of restricting the amounts of payments.

Reports of Committees of Congress

The Congress undertook to investigate the manner in which the statute had been administered and heard testimony, most of which was directed to the claim of the Chestatee Pyrites & Chemical Corporation, the relator in this case. This testimony was printed and published as a public document. This document is entitled:

"RELIEF FOR WAR MINERALS PRODUCERS
HEARINGS
before the
COMMITTEE ON MINES AND MINING
HOUSE OF REPRESENTATIVES
Sixty-Sixth Congress
Second Session
on
H. J. RES. 170"

Subsequent to that investigation and on March 25, 1920, Mr. Garland, from the Committee on Mines and Mining, submitted to The Congress the report on the amendment to the War Minerals Relief Act. This report criticised severely the former commission for its illiberal treatment of claimants, and said:

Findings of Committee.

> "The Committee is of the opinion that the Commission erred in its interpretation of the legislative intent. Its interpretation and application of the provisions of the Act and the application of the provisions of the law to the facts."

The report further declared that if the language of the Act was interpreted as the courts of the country interpret such legislation "just and equitable" settlements could be had of every legitimate claim.

Following this the report cited the cases requiring a liberal construction of this remedial statute. (For cases see Note 3, supra. p. 16).

One result of this investigation and report was the Act of November 23rd, 1921, 42 Stat. 322, U. S. Comp. Stat. 1923, Supp. pp. 185, 186.

Act Nov. 23, 1921.

In this Act "justice and equity" is required to be done and the Secretary is directed to award "proper amounts".

The purpose and effect of the Act of November 23rd, 1921, was to liberalize the construction of the statute by the Department of the Interior and to grant re-hearings when it was necessary. The Act concludes with this provision:

> "If in claims passed upon under said Act (the Act of March 2nd, 1919,) awards have been denied or made on rulings contrary to the provisions of this amendment or through miscalculation the Secretary of the Interior may award proper amounts or additional amounts."

THIRD AMENDMENT:

Although Congress had evidenced its determination that there should be an equitable and just administration of its law, the Interior Department denied that interest paid and obligated to be paid and purchase of property were items that it could consider; and reported to The Congress, that if these two items were considered the appropriation of Eight and one-half Million was insufficient. In stating the amounts that were to be paid if the law were changed, the Secretary in a letter to the Chairman of the Committee on Mines and Minings of the Senate, dated February 18th, 1924, stated one item of Two hundred six Thousand Three hundred Twenty and 30/100 ($206,320.30) Dollars for interest on borrowed capital, and the other unpaid items showed a total of approximately Four Million ($4,000,000.00) Dollars deficit if interest, purchase of property and other controverted items were allowed.

There was then introduced into the Senate of the United States Senate Bill No. 2797, which read:

Original Bill.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the Secretary of the Interior to lawfully pay adjudicated claims arising under the provisions of the so-called war minerals relief act there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sum or sums, not exceeding $2,500,000, as may be necessary to satisfy such of said claims as shall be approved and certified for payment by the said Secretary of the Interior, under the provisions of an act entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes', approved March 2, 1919, as amended, and that the limitation in said act, as amended, on the aggregate amount to be disbursed thereunder in the payment of said claims is hereby repealed.

Relator's Claim One Reason For Further Legislation.

The Committee on Mines and Mining of the Senate, having under consideration this Bill, on March 18th, 1924, made its report. (See Senate calendar 306, 68th Congress, first session, report 292). In this report Senator Oddie first copied the bill, as above, then sent out the letter of the Secretary, to which reference has already been made, then copied the opinion of the Court of Appeals of the District of Columbia in the case of Hubert Work, Secretary, vs. United States, ex rel. Rives, 295 Fed. 225, 54 App. D. C. 84, which case dealt with the purchase of property, then copied the memoranda opinion of Mr. Justice Siddons of the Supreme Court of the District of Columbia in this case. (This opinion is

copied in the record, page 12,) and then the Chairman inserts in his report a letter, as follows:

Respondent's Letter to the Senate.

"Department of the Interior,
Washington, March 15, 1924.

Hon. Tasker L. Oddie,
Chairman Committee on Mines and Mining,
United States Senate.

My dear Senator Oddie: I am in receipt of your request, for report upon S. 2797, entitled 'A bill to authorize the payment of claims under the provisions of the so-called war minerals relief act', which bill proposes to appropriate out of the Treasury such sums, not exceeding $2,500,000, as may be necessary to satisfy such claims as shall be approved and certified for payment by the Secretary of the Interior.

If claims, or parts of claims, heretofore denied by the Secretary of the Interior **are not reversed as a result of litigation now pending in the courts, the money still remaining available in the appropriation will be sufficient,** or nearly sufficient, to pay the remaining unadjusted claims. **If, as a result of pending litigation, items,** for property losses **and for interest,** etc., must ultimately be paid, I point out that because these items have never been allowed for payment, no statistics are available on which to predicate a statement as to the per cent of the claims likely to prevail, but it is believed from as careful an analysis of the claim as can be made, that the additional appropriation proposed of $2,500,000 will be sufficient to take care of all claims. Whether legislation making provision for an increased appropriation largely to take care of claims now in litigation should be enacted at this time is a question which, I

think, Congress and not this department should determine.

Sincerely yours,

Hubert Work."

This bill, having gone to the House, the Committee of the House submitted on April 29th, 1924, its report. This report is entitled "68th Congress, First Session, House of Representatives, Report No. 601," dated April 29th, 1921. The Committee, after copying the bill introduced in the Senate, and hereinbefore copied, continued:

House Committee Report.

"The committee had before it for consideration S. 2797 and H. R. 8709. Hearings were had by the committee. From such hearings and letters from the Secretary of the Interior it appeared therefrom to the committee **that such legislation was required as necessary, just and proper.**

"The first act, passed March 2, 1919 (40 U. S. Stats. 1272), directed the Secretary of the Interior to adjust and pay the net losses suffered by any person by reason of producing or preparing to produce certain minerals at the request or demand of the Government; these minerals were and are known as war minerals and their production was sought by the Government for war purposes.

"In order to secure production of these minerals during the war, the Government promised that it would establish and maintain reasonable prices for the duration of the war and two years thereafter. This promise was fulfilled by the passage of the original war minerals bill approved October 5, 1918, which carried an appropriation of $50,000,000, to enable the Government to administer same.

"Because of the sudden termination of the war, this bill was not administered. To have done so would likely have resulted in a loss of the entire appropriation. Inasmuch as it was a war measure it was deemed best to abandon it and make settlement with those the Government had requested to produce.

"Accordingly, Congress passed the said act of March 2, 1919, which reserved $8,500,000 out of the $50,000,000 carried in the original war minerals bill with which to pay the net losses suffered by said war minerals producers. This $8,500,000 was only a guess at the actual losses sustained by the war minerals producers, because neither their number nor investments were known when the act of March 2, 1919, was passed.

"In the adjudication of claims under the act of March 2, 1919, the Secretary of the Interior refused to validate claims based on published appeals by the Government and because thereof, denied more than 600 of the claims filed.

"These claimants appealed to Congress, with the result that the amendatory act of November 23, 1921 (42 U. S. Stats. p. 322), was passed, which enabled the Secretary to pay these claimants. The act of 1921 carried no additional appropriation, and under it approximately $3,500,000 was paid out.

"Of the appropriation there remains the sum of $1,738,829.75.

"If the decisions of the Supreme Court of the District of Columbia be finally sustained, it will require, according to the Secretary of the Interior, an additional appropriation of $2,500,000 in order to enable the Secretary to adjust and pay the remaining claims.

"Approximately two-thirds of the claims have been satisfactorily adjusted and paid. Of the one-third re-

maining the Secretary has made many adjustments and has certified the amounts that the claimants are entitled to under the acts.

"When it became apparent that the fund would likely prove inadequate to pay the remaining claimants in full, the Secretary, on October 10, 1923, quite properly suspended further payments. The suspension of payments has caused a most distressing situation with numerous claimants who have been in desperate financial straits ever since they lost their all in answering their Government's appeal. Resumption of payments will save several claimants from financial ruin.

"There are claims pending under the act of 1919 which have not been adjusted and paid.

The Issue Here Influenced Congressional Legislation.

"One of the questions pending in the courts is the item of 'interest paid' on moneys borrowed as an item of 'net losses suffered'. Many of the claimants are still paying interest on 'obligations incurred' in order to enable them to comply with the Government's request. If 'interest paid' is ultimately determined to be a proper item of loss, such claims should be speedily adjusted and paid as such loss increases each day.

"In view of the cases cited, by Mr. Justice Siddons, in his opinion above set forth, and particularly the case of United States vs. State of New York (160 U. S. 598), it would apparently seem that 'interest paid' may be ultimately determined to be a part of the net losses to be repaid to claimants in a proper case; therefore the Secretary of the Interior should be provided with ample funds to promptly liquidate these claims in the event such obligations determined are to be a part of the net losses.

"Finally, it is not right that two-thirds of the claimants should be paid in full and the remaining one-third only receive 40 cents on the dollar.

"The Secretary of the Interior since October 10, 1923, has made no payments out of the appropriation remaining. Many awards have been made. Because of this suspension of payments many claimants are in very great financial distress.

"In order to enable the Secretary to promptly and properly adjust and pay all just claims, and that claimants be treated alike, this bill should have prompt and favorable action by Congress, and your Committee therefore recommends that the bill should pass.

"These claimants contributed at the request and demand of their Government and in many instances at great sacrifice. It is only fair and just that all of the people should bear their part of this burden rather than that it should be placed upon these few.

"The Director of the Budget has investigated the necessity for the appropriation and same has his approval.

"The necessity for the proposed legislation, as above stated, is fully set forth in the following letter from the Secretary of the Interior."

The Committee then copied the letter to Senator Oddie from Secretary Work, hereinbefore referred to, copied the opinion of the Rives case, the opinion in this case already referred to, and the letter of Secretary Work dated March 15th, 1924, copied above, and concluded:

"In view of the foregoing your Committee recommends that the bill do pass."

Later, on June 5th, 1924, Mr. Secretary Work wrote the

Honorable Louis T. Cramton, House of Representatives, Washington, D. C. (see Congressional Record, Volume 65, June 5th, p. 10979). In this letter the Honorable Secretary said in part:

Respondent's Letter to the House.

"In the settlement of war minerals claims it has been held from the beginning that the act did not contemplate reimbursement for the purchase price of property or interest on borrowed capital. Mandamus proceedings were begun to compel such payments, and the Supreme Court and the Court of Appeals of the District of Columbia have sustained the relators. The Government has appealed to the Supreme Court of the United States in both cases, and the latter court has set November 10, next, as a date for hearing on the question of purchase of property. Upon advice that the lower courts had ruled favorable to the relators, the Secretary of the Interior suspended payment of awards because the present law contains an express provision that in the administration of the act the appropriation in no event shall be exceeded; and to make further payments would have been a violation of the law, as a deficiency is certain under the lower court's findings.

"Suspension of payments was ordered last October, but the work of adjusting claims went on and is still going on, no money being paid to claimants. . . . .

"You will see by the foregoing that the department is not concerned about the appropriation of the $2,500,000 now. That money would not be needed unless the Supreme Court should compel repayment of purchase price of property or interest on borrowed capital, or both. But it is desirable that the limitation of the present law as to extending the appropriation be repealed, and, unfortunately, the repeal is linked with the

appropriation of the $2,500,000 in the bill before you." (Emphasis supplied.)

Upon this letter being read, Mr. Cramton proposed an amendment which, by striking provisions of the original Senate Bill No. 3797, left the bill as reading (see Congressional Record aforesaid, page 10979):

Act of June 7, 1924.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, to enable the Secretary of the Interior to lawfully pay adjudicated claims arising under the provisions of the so-called War Minerals Relief Act, an Act entitled, 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes', approved March 2, 1919, as amended, the limitation in said Act, on the aggregate amount to be disbursed thereunder in the payment of said claims is hereby repealed."

The bill as amended was passed by the House.

On June 7th, Congressional Record, p. 11244, The Senate concurred in the House amendment and later on the same day the law passed and is now in force as amended. (See Act approved June 7th, 1924, Statutes United States, First Session, 68th Congress, 1923-1924, Part 1, p. 634).

quiring the Secretary of the Interior to consider and allow a claim for interest, under the Dent Act.

Mr. Merrill E. Otis, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* was on the brief, for appellant.

Mr. Edgar Watkins, with whom *Mr. Hoke Smith* and *Mr. Mac Asbill* were on the brief, for appellee.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This is an appeal under section 250 of the Judicial Code, par. 6, from a writ of mandamus compelling the Secretary of the Interior to consider and allow a claim of the Chestatee Pyrites & Chemical Corporation, under section 5 of the Dent Act. It presents questions very similar to those heard in *Work* v. *United States ex rel. Rives*, just decided, *ante*, p. 175.

The relator owned a pyrites mine before the war. In compliance with the request of the Government to enlarge its plant to meet the war necessities, it borrowed the sum of $695,000, on which it obligated itself to pay interest at the rate of 6 per cent. per annum. After three hearings before the Secretary of the Interior, it was awarded $693,313.79. In making the award the item of interest claimed of more than $40,000 on the amount borrowed was disallowed. The mandamus herein issued to compel the consideration and allowance of this interest.

It is sought in this case, as it was in the *Rives Case*, to avoid the objection that the mandamus would control and restrict the statutory discretion vested in the Secretary by the averment that he had not taken jurisdiction of the claim for interest and had not considered it. This case, like the *Rives Case*, was heard on demurrer to the answer, and the answer shows clearly that the claim for

interest was fully considered by two Secretaries of the Interior and denied.

The only issue is whether the Secretary had discretion under section 5 finally to determine whether interest paid upon the capital borrowed is to be considered as part of the net losses incurred by the relator in preparing for and producing the pyrites. We think he had.

Great reliance was placed by the courts below on the ruling of this Court in *United States* v. *New York*, 160 U. S. 598. That was an appeal from a decision of the Court of Claims in a case brought by the State of New York against the United States under a statute of the United States, by which the Secretary of the Treasury was directed to pay out of any money in the Treasury not otherwise appropriated, to the Governor of any State, the costs, charges and expenses properly incurred by such State for enrolling, subsisting, clothing, supplying, arming, equipping, paying and transporting its troops employed in aiding to suppress the insurrection against the United States. It was held that the State could recover interest on the bonds issued by it to do the things provided for in the Act.

The Act did not vest in the Secretary of the Treasury discretion finally to decide the extent of the indebtedness, and the claim was duly transferred to the Court of Claims in order that a judgment might be rendered thereon. The judgment was carried to this Court. The issue, therefore, was merely a question of law whether under the statute interest was payable, and it was held that it was.

The circumstances of the case were different from this, and it is doubtful whether the conclusion as to interest in such case would be applicable to the claim made by the relator, even if we could hear it on its merits. But it is not here on its merits. The question was one for the Secretary of the Interior to decide, and that finally.

Reversed.

WORK, SECRETARY OF THE INTERIOR, *v.* UNITED STATES EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 401. Argued November 26, 1924.—Decided March 2, 1925.

1. Where the answer of an officer to a petition for a mandamus shows clearly that the claim sought to be enforced was considered and denied by him, the writ, if granted on demurrer to the answer, can not be sustained as merely requiring that he take jurisdiction to decide the claim. See P. 186.
2. Under § 5 of the Dent Act, a decision of the Secretary of the Interior that interest paid on capital borrowed is not part of the net losses incurred by a claimant for and in the production of mineral, is a discretionary decision not reviewable by mandamus. *Work* v. *Rives*, *ante*, p. 175. P. 187.

54 App. D. C. 380; 298 Fed. 839, reversed.

APPEAL from a judgment in the Court of Appeals of the District of Columbia which affirmed a judgment of the Supreme Court of the District, in mandamus, re-